

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of  
2 Information Act; open meeting exemptions; providing context for those meeting exemptions that  
3 cross-reference corollary records exemptions.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That § 2.2-3711 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

7 A. Public bodies may hold closed meetings only for the following purposes:

8 1. Discussion, consideration, or interviews of prospective candidates for employment;  
9 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of  
10 specific public officers, appointees, or employees of any public body; and evaluation of performance of  
11 departments or schools of public institutions of higher education where such evaluation will necessarily  
12 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be  
13 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter  
14 that involves the teacher and some student and the student involved in the matter is present, provided the  
15 teacher makes a written request to be present to the presiding officer of the appropriate board.

16 2. Discussion or consideration of admission or disciplinary matters or any other matters that  
17 would involve the disclosure of information contained in a scholastic record concerning any student of  
18 any Virginia public institution of higher education or any state school system. However, any such  
19 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be  
20 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if  
21 such student, parents, or guardians so request in writing and such request is submitted to the presiding  
22 officer of the appropriate board.

23 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the  
24 disposition of publicly held real property, where discussion in an open meeting would adversely affect  
25 the bargaining position or negotiating strategy of the public body.

- 26 4. The protection of the privacy of individuals in personal matters not related to public business.
- 27 5. Discussion concerning a prospective business or industry or the expansion of an existing  
28 business or industry where no previous announcement has been made of the business' or industry's  
29 interest in locating or expanding its facilities in the community.
- 30 6. Discussion or consideration of the investment of public funds where competition or bargaining  
31 is involved, where, if made public initially, the financial interest of the governmental unit would be  
32 adversely affected.
- 33 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to  
34 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect  
35 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or  
36 retained by a public body regarding specific legal matters requiring the provision of legal advice by such  
37 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been  
38 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
39 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit  
40 the closure of a meeting merely because an attorney representing the public body is in attendance or is  
41 consulted on a matter.
- 42 8. ~~In the case of boards of visitors of public institutions of higher education, discussion~~  
43 Discussion or consideration by boards of visitors of a public institution of higher education of matters  
44 relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be  
45 performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and  
46 contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a  
47 public institution of higher education in Virginia shall be subject to public disclosure upon written  
48 request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"  
49 means any government other than the United States government or the government of a state or a  
50 political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of  
51 the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is  
52 owned by foreign governments or foreign persons or if a majority of the membership of any such entity

53 is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a  
54 foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of  
55 the United States or a trust territory or protectorate thereof.

56 9. ~~In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia~~  
57 ~~Museum of Natural History, the Jamestown Yorktown Foundation, and The Science Museum of~~  
58 ~~Virginia, discussion~~ Discussion or consideration of matters relating to specific gifts, bequests, and grants  
59 by boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the  
60 Jamestown-Yorktown Foundation, and the Science Museum of Virginia.

61 10. Discussion or consideration of honorary degrees or special awards.

62 11. Discussion or consideration of tests, examinations, or other records used, administered, or  
63 prepared by a public body and excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1,  
64 relating to the evaluation of (i) any student or any student's performance; (ii) any employee's or  
65 employment seeker's qualifications or aptitude for employment, retention, or promotion; or (iii)  
66 qualifications for any license or certificate issued by a public body.

67 12. Discussion, consideration, or review by the appropriate House or Senate committees of  
68 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure  
69 statement filed by the member, provided the member may request in writing that the committee meeting  
70 not be conducted in a closed meeting.

71 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement  
72 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the  
73 governing body in open meeting finds that an open meeting will have an adverse effect upon the  
74 negotiating position of the governing body or the establishment of the terms, conditions and provisions  
75 of the siting agreement, or both. All discussions with the applicant or its representatives may be  
76 conducted in a closed meeting.

77 14. Discussion by the Governor and any economic advisory board reviewing forecasts of  
78 economic activity and estimating general and nongeneral fund revenues.

79 15. Discussion or consideration of medical and mental health records excluded from this chapter  
80 pursuant to subdivision 1 of § 2.2-3705.5.

81 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant  
82 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;  
83 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game  
84 information and studies or investigations ~~exempted excluded~~ from ~~disclosure under this chapter pursuant~~  
85 to subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

86 17. Those portions of meetings by local government crime commissions where the identity of, or  
87 information tending to identify, individuals providing information about crimes or criminal activities  
88 under a promise of anonymity is discussed or disclosed.

89 18. Those portions of meetings in which the Board of Corrections discusses or discloses the  
90 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or  
91 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
92 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
93 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

94 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
95 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-  
96 enforcement or emergency service officials concerning actions taken to respond to such matters or a  
97 related threat to public safety; discussion of records excluded from this chapter pursuant to subdivision 3  
98 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or  
99 the security of any facility, building, structure, information technology system, or software program; or  
100 discussion of reports or plans related to the security of any governmental facility, building or structure,  
101 or the safety of persons using such facility, building or structure.

102 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-  
103 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of  
104 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
105 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or

106 other ownership interest in an entity, where such security or ownership interest is not traded on a  
107 governmentally regulated securities exchange, to the extent that such discussion (i) concerns  
108 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the  
109 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the  
110 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership  
111 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the  
112 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and  
113 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision  
114 shall be construed to prevent the disclosure of information relating to the identity of any investment  
115 held, the amount invested or the present value of such investment.

116 21. Those portions of meetings in which individual child death cases are discussed by the State  
117 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
118 individual child death cases are discussed by a regional or local child fatality review team established  
119 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
120 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
121 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
122 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
123 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

124 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
125 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
126 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
127 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
128 proprietary, business-related information pertaining to the operations of the University of Virginia  
129 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
130 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
131 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
132 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such

133 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
134 Medical School, as the case may be.

135 23. ~~In the case of the Virginia Commonwealth University Health System Authority, discussion~~  
136 Discussion or consideration by the Virginia Commonwealth University Health System Authority of any  
137 of the following: the acquisition or disposition of real or personal property where disclosure would  
138 adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that  
139 could affect the value of such property, real or personal, owned or desirable for ownership by the  
140 Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services  
141 or work to be performed by the Authority; marketing or operational strategies where disclosure of such  
142 strategies would adversely affect the competitive position of the Authority; members of its medical and  
143 teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other  
144 employees. This exemption shall also apply when the foregoing discussions occur at a meeting of the  
145 Virginia Commonwealth University Board of Visitors.

146 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee  
147 within the Department of Health Professions to the extent such discussions identify any practitioner who  
148 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

149 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
150 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
151 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
152 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title  
153 23 is discussed.

154 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
155 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-  
156 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
157 wireless E-911 service.

158 27. Those portions of disciplinary proceedings by any regulatory board within the Department of  
159 Professional and Occupational Regulation, Department of Health Professions, or the Board of

160 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach  
161 a decision or meetings of health regulatory boards or conference committees of such boards to consider  
162 settlement proposals in pending disciplinary actions or modifications to previously issued board orders  
163 as requested by either of the parties.

164 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11  
165 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are  
166 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the  
167 responsible public entity concerning such records.

168 29. Discussion of the award of a public contract involving the expenditure of public funds,  
169 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
170 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
171 the public body.

172 30. Discussion or consideration of grant or loan application records excluded from this chapter  
173 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the  
174 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment  
175 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

176 31. Discussion or consideration by the Commitment Review Committee of records excluded  
177 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to  
178 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

179 32. [Expired.]

180 33. Discussion or consideration of confidential proprietary records and trade secrets developed  
181 and held by a local public body providing certain telecommunication services or cable television  
182 services excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

183 34. Discussion or consideration by a local authority created in accordance with the Virginia  
184 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade  
185 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

186 35. Discussion or consideration by the State Board of Elections or local electoral boards of  
187 voting security matters made confidential pursuant to § 24.2-625.1.

188 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory  
189 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of ~~records~~  
190 criminal investigative files excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

191 37. Discussion or consideration by the Brown v. Board of Education Scholarship ~~Program~~  
192 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision  
193 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum  
194 scholarship award, review and consider scholarship applications and requests for scholarship award  
195 renewal, and cancel, rescind, or recover scholarship awards.

196 38. Discussion or consideration by the Virginia Port Authority of records excluded from this  
197 chapter pursuant to subdivision 1 of § 2.2-3705.6, relating to certain proprietary information gathered by  
198 or for the Virginia Port Authority.

199 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
200 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-  
201 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
202 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's  
203 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this  
204 chapter pursuant to subdivision 25 of § 2.2-3705.7.

205 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3  
206 of § 2.2-3705.6, relating to business, trade, or tourism development or retention.

207 41. Discussion or consideration by the Board of Education of records relating to the denial,  
208 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §  
209 2.2-3705.3.

210 42. Those portions of meetings of the Virginia Military Advisory Council or any commission  
211 created by executive order for the purpose of studying and making recommendations regarding  
212 preventing closure or realignment of federal military and national security installations and facilities

213 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs  
214 organization appointed by a local governing body, during which there is discussion of records excluded  
215 from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

216 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of  
217 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7, relating to personally  
218 identifiable information of donors.

219 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of  
220 records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6, relating to certain  
221 information contained in grant applications.

222 45. Discussion or consideration by the board of directors of the Commercial Space Flight  
223 Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6, relating to  
224 rate structures or charges for the use of projects of, the sale of products of, or services rendered by the  
225 Authority and certain proprietary records of a private entity provided to the Authority.

226 46. Discussion or consideration of personal and proprietary ~~information that are~~ records related  
227 to the resource management plan program and excluded from ~~the provisions of~~ this chapter pursuant to  
228 (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exemption shall not apply to  
229 the discussion or consideration of records that contain information that has been certified for release by  
230 the person who is the subject of the information or transformed into a statistical or aggregate form that  
231 does not allow identification of the person who supplied, or is the subject of, the information.

232 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia  
233 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1  
234 of § 2.2-3705.3, relating to (i) investigations of applicants for licenses and permits and of licensees and  
235 permittees, (ii) proprietary information, trade secrets, financial records, and (iii) contract cost estimates  
236 or subdivision 34 of § 2.2-3705.7, relating to marketing and operational strategies.

237 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a  
238 closed meeting shall become effective unless the public body, following the meeting, reconvenes in

239 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,  
240 regulation, or motion that shall have its substance reasonably identified in the open meeting.

241 C. Public officers improperly selected due to the failure of the public body to comply with the  
242 other provisions of this section shall be de facto officers and, as such, their official actions are valid until  
243 they obtain notice of the legal defect in their election.

244 D. Nothing in this section shall be construed to prevent the holding of conferences between two  
245 or more public bodies, or their representatives, but these conferences shall be subject to the same  
246 procedures for holding closed meetings as are applicable to any other public body.

247 E. This section shall not be construed to (i) require the disclosure of any contract between the  
248 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
249 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
250 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
251 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
252 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public  
253 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
254 bonds.

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